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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/777,392

02/13/2004

Joseph Raymond Kieren

SBC 0133 PA (P00300)

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08/14/2006

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EXAMINER

NGUYEN, QUYNH H

ART UNIT

PAPER NUMBER

2614

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/777,392

Applicant(s)

KIEREN, JOSEPH RAYMOND

Examiner

Quynh H. Nguyen

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 14-20 is/are rejected.
- 7) ☒ Claim(s) 9-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-5, 7-8, and 14-19 are rejected under 35 U.S.C. 102(e) as being anticipated by King (U.S. Patent 6,301,351).

Regarding claims 1, 7, and 14, King teaches the steps of: connecting a cross-connect switch (Fig. 4, 102) in a line associated with the subscriber's directory number between the originating switch and (Fig. 4, 106) a Main Distributing Frame (Fig. 2, 108) to establish a first active communication channel (col. 2, lines 26-29); connecting the cross-connect switch (Fig. 4, 102) in-line between the ported switch (Fig. 4, 130) and the Main Distributing Frame (Fig. 2, 108) to establish a second inactive communication channel (col. 4, lines 20-21); and activating the cross-connect switch to deactivate the first communication channel and activate the second communication channel thereby routing communications associated with the subscriber's directory number to the ported switch (col. 4, lines 25-38).

Regarding claims 2-5, and 15-19, King teaches the staff at the purchasing Local Exchange Carrier (LEC) activate appropriate relay, etc, initiate the necessary work and tests to confirm a proper connection with Distributing Frame 108 reads on claimed "the step of activating includes the step of: sending a predetermined tone and Mechanized Loop Testing tracking tone along the first active communication channel, and testing the first communication channel to validate the presence of the cross-connect switch prior to and after sending the predetermined tone.

Regarding claim 8, it is inherent that the cross-connect switch comprises a controller even though King does not show a controller. The cross connect switch would not function without the controller.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over King (U.S. Patent 6,301,351).

Regarding claims 6 and 20, King does not teach updating a database to associate the subscriber's directory number with the ported switch.

It would have been obvious to one of ordinary skill in the art at the time the invention was made that updating a database to associate the subscriber's directory number with the ported switch is necessary after the transfer in order to have an updated database reflected the hardware changed to avoid diagnostic tests failure if the hardware and the database are not matched.

Allowable Subject Matter

5. Claims 9-13 are objected.

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is reasons for allowance

For independent claim 9, the combination of the claimed features and the feature discussed below is neither taught nor made fairly obvious by the prior art of record. The claims recite a telephone network wherein the cross-connect switch comprises: an originating dial tone port for receiving a first line from said local exchange carrier originating switch associated with a subscriber's directory number; a ported dial tone port for receiving a second line from said competitive local exchange carrier ported switch associated with said subscriber's directory number; a main distribution frame port for connecting said cross-connect switch to a MDF associated with said local exchange carrier originating switch and said competitive local exchange carrier ported switch; an electronic switch for connecting said ODT port and PDT port to said MDF port; and a

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controller in operative communication with said switch, said ODT port, said PDT port, and said MDF port, said controller receiving a trigger signal and, in response thereto, establishing a communication channel between said PDT port and said MDF port, can closing a communication channel between said ODT port and said MDF port.

Claims 10-13 are objected because they depend on objected claim 9.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,711,251.

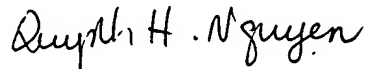
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quynh H. Nguyen whose telephone number is 571-272-

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7489. The examiner can normally be reached on Monday - Thursday from 6:15 A.M. to 4:45 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan, can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Quynh H. Nguyen
Patent Examiner
Art Unit 2614